

2 Phil. 119

[G.R. No. 1013. April 08, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SIMPLICIO SENSANO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

The defendant, Simplicio Sensano, is charged with the embezzlement of public funds, alleged to have been committed in the following manner:

That the defendant, being the municipal treasurer of the town of Rosales, Province of Pangasinan, in the month of February, 1902, withdrew, with intent to appropriate to his own use, from the municipal safe then in his charge \$320, which constitutes the offense of embezzlement of public funds defined and punished under article 390, No. 2, of the Penal Code.

He was tried and found guilty of the embezzlement of \$320, and sentenced by the court of Pangasinan to imprisonment at hard labor for the period of three years and two months. From this judgment he appeals.

John Douglas, a witness for the prosecution, testified that he was deputy treasurer of the Province of Pangasinan, and as such was sent to check up the cash and the accounts of the defendant as treasurer of Rosales. That he arrived at Rosales about 5 o'clock in the afternoon and immediately proceeded to make an examination of the municipal safe then in charge of the defendant; that he started to count the cash and before he had finished the defendant stopped him, saying, "Wait a minute; I gave my brother a check for \$166.66 to have it cashed in Lingayen, but he has not returned the check or its equivalent in cash;" that in the presence of the defendant he proceeded to finish counting the cash and found \$1,155.01; that he did not open any of the packages which were marked as containing certain amounts because it was getting dark, and he arranged with the defendant that the

count should be made the next morning at the presidencia, at which time the defendant promised to produce the cashbook pertaining to his office; that on leaving the presidencia that evening he locked and sealed the cash box after placing the money back in the box; that the cash box was not again opened until the 4th of February, when he opened it for the purpose of cashing a school-teacher's check of \$174.90; that he took this amount from the safe and replaced the money with this check; that he then locked and sealed up the safe and did not open it again until the 10th day of February. That the defendant left Rosales the next morning after his arrival about 7 o'clock, and never appeared, as promised, to make the count of the money contained in the safe or to produce his books. That on the 10th day of February the witness recounted the money in the presence of other parties, the defendant not being present. That on this counting of the money the witness found \$1,033 contained in the safe. That he opened the packages which were said to contain \$40, and found some half pesos mixed in with the pesos in such a way that many of the packages had the appearance of containing \$40 each, when in fact they contained less; that the discrepancy between the count made on the 1st day of February of \$1,155.01 and that made at this date, to wit, \$1,033, was due to the fact that the packages did not contain the full amount represented. That at this time he actually counted the money, peso by peso, and knows that this counting was correctly done. Previous to making the last count of the money he had examined the books of the defendant and found that there should have been \$1,303 in the cash box; that two native teachers presented themselves to him, while he was in charge of the office, requesting payment of \$30 and \$20, respectively, which appeared from the books of the treasurer as having been paid, but which, as stated by them, was never received. The difference between the amount shown to be due on the books of the treasurer, to wit, the sum of \$1,303.40 and the amount of \$1,033, as found in cash in the safe, is a difference of \$270.40; that adding the \$50 shown on the books of the treasurer as paid to the two native teachers, but which was paid by the witness, brought the difference up to \$320.40.

The witness Douglas also testified that between the 10th of February, the date on which he made the last count of the money, and the 23d day of February, the date on which he again locked and sealed the safe and turned the key over to the provincial treasurer of Pangasinan, he was in possession of the safe and made various collections due the office of the municipal treasurer of Rosales amounting to the sum of \$64. This sum, together with the amount of \$1,033, was the amount in the safe on the 23d day of February, when he sealed and locked it, and turned the key over to the provincial treasurer. This was substantially the proof of the Government.

The defendant introduced evidence to show that between the 1st day of February and the

date of Douglas's leaving Rosales, to wit, the 23d day of February, he requested Douglas several times, through other parties, to make a recount of the money and to give him an inventory of the property received from him. This, according to the testimony of defendant's Avitnesses, Douglas refused to do.

There were discrepancies on many immaterial points in the case and some proof offered tending to show that the safe was not sealed and locked for the entire time between the 1st of February and the 10th of February, the respective dates on which the witness Douglas made a count of the money.

The case was tried and the defendant was sentenced on the 28th day of May, 1902.

On the 27th day of August, 1902, the case then being on appeal in this court, the defendant moved this court for a new trial on the ground of newly discovered evidence. This motion is supported by notarial act of date the 9th day of June, 1902, in which act it is stated that the treasurer who was appointed as successor to defendant took possession of the safe on the 9th day of June and in the presence of several persons then counted the money, and that the amount found in the safe on this counting was the sum of \$1,348.23, which exceeded by \$6.55 the amount shown to be due from the defendant to the municipality by the books of the treasurer, after deducting the \$64 placed in the safe by Douglas; that at the time of opening the safe the seal appeared to be unbroken.

The motion does not state that the safe was not in charge of the defendant after the 1st day of February, the date on which he was removed from the office and possession was taken by the witness Douglas, nor was there any proof tending to show that the defendant had access to the safe, nor that any other person had such access other than the witness Douglas or the provincial treasurer who was in possession of the keys.

In view of the fact that the defendant did not have the power to make the examination after the safe left his possession up to the date of his trial, we think it just and proper that he should have an opportunity of presenting the proof as to what the safe contained when delivered on the 9th of June to his successor.

The Government will also have the opportunity of showing, if it can be done, that the seal of the safe had been broken, or such circumstances as will prove that the safe was accessible to the defendant or to other persons from the 23d day of February up to the date of the opening of the safe on the 9th day of June.

The judgment of the court below is set aside and a new trial awarded in the Court of First Instance.

The testimony in the case to the effect that the defendant's books contained an entry showing that the sums of \$20 and \$30, respectively, had been paid to the two native teachers, when in fact no such payments had been made, if substantiated, would show the defendant to be guilty of a greater offense than that charged in the complaint, to wit, that of the falsification of an official document, defined and punished under article 301 in connection with article 300 of the Penal Code.

The judgment is reversed and a new trial ordered, with costs *de officio*.

Arellano, C. J., Torres and Mapa, JJ., concur.

CONCURRING IN THE RESULTS OF THIS OPINION

WILLARD AND LADD, JJ.:

It was plainly proved in this case by the testimony of Douglas that he went to Kosales for the purpose of removing the defendant from his office of municipal treasurer. He carried with him an order from the provincial treasurer for such removal, delivered it to the defendant as soon as he arrived at Rosales, and demanded and then received from the defendant the key to the safe. The defendant was not removed because of any irregularity in his accounts, but, as Douglas testified, because he had kept the municipal safe in a place other than the presidencia. Douglas testified also that he had examined the accounts on the 7th of January preceding, and found them correct. Douglas took possession of the safe, not for the purpose of examining the accounts but because the treasurer had been removed.

Four witnesses for the defendant testified that they were present when Douglas removed the defendant from office and received the key, and that the defendant then demanded that Douglas count the cash and make an inventory of the property then turned over to him, and that Douglas refused to do it.

Miller, an American school-teacher, a witness for the Government, testified that the defendant on the day that he was removed from office came to him and begged him to get

Douglas to recount the money. The witness asked Douglas to do this and the latter refused.

The justice of the peace testified that five or six days after his (the defendant's) removal from office the defendant came to him and asked him to intercede with the commander of the American troops, there stationed in order to get Douglas to recount the money and make an inventory.

It is proved that Douglas never made an inventory of the property turned over to him by the defendant, and never gave the defendant any kind of a receipt for anything which he received from him. Douglas admitted that he never even informed the defendant of the exact amount of the deficit claimed by him, and when he, first saw the defendant after its alleged discovery he never mentioned it.

The circumstances relating to the charge of falsification in connection with the payment of the two school-teachers rests entirely upon the testimony of Douglas, and even his testimony does not indicate that the defendant personally made any false entries in his books. I do not think the evidence of Douglas sufficient to warrant any prosecution against the defendant for falsification.

I agree that a new trial should be granted.
